

FOCUS 2014



Public policies for the protection of human rights defenders

Latest Trends



Credits

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Preface

By Michel Forst – United Nations Special Rapporteur on the Situation of Human Rights Defenders



UN Photo/Jean-Marc Ferré

It was with great pleasure that I agreed to write a preface for the 2014 edition of **Protection International's Focus Report**. I write it with even more interest in view of the wish I expressed, immediately after taking office as Special Rapporteur in June of this year, to establish close relations with the principal international organisations working for the protection of human rights defenders (HRDs).

I have long been aware and appreciative of the quality of the work carried out by Protection International, as I myself have been involved for many years in the issue of HRDs.

Since my appointment as Special Rapporteur, I have received a great number of communications and reports denouncing violations and threats against HRDs throughout the world. Women HRDs, defenders of the right to a healthy environment,

LGBTI activists, Dalits (Untouchables), economic and social rights activists, peasants' rights activists, NGOs working on business and human rights. All of these groups are threatened and targeted and their work is restricted, when all they seek to do is promote and protect universally recognised rights.

I am very happy that **Focus** has chosen to concentrate this year on the question of regional protection mechanisms as well as on national-level legislation. I have been shocked, considering the increase in attacks and threats against HRDs, to see how weak the response of states has been and how dramatically they are falling behind in implementing the observations and recommendations addressed to them by the United Nations and the regional bodies.

Whatever the protection mechanisms may be, whatever the guidelines or national legal frameworks may be, without strong pressure generated by society and political will from states to achieve real progress on a national level, attacks and threats will remain as widespread as they are today.

This is also one of the reasons why I plan to dedicate part of my time and my energy to consulting with the various regional mechanisms for the protection of HRDs and monitoring their recommendations.

Introduction

Protection International (PI) is pleased to launch, for the second year running, its **Focus Report**. This regular publication is intended to provide detailed monitoring of developments in the field of national public policy associated with the protection of Human Rights Defenders (HRDs) around the world.

Since 2008, with its **FOCUS Global Observatory**,¹ PI has specialised in researching, systematising and disseminating good practice and lessons learned in the field of public policy and legal instruments for the protection of HRDs, in addition to the permanent monitoring of the situation in several countries in Latin America, Africa and Asia in which this kind of policy has been implemented or where efforts exist to pass legislation. In this year's edition of **Focus**, PI highlights the renewed interest in adopting legal instruments for the protection of HRDs in Latin America (in Honduras and Guatemala) and in Sub-Saharan Africa (in Côte d'Ivoire, Burundi and Mali).

We also hope to draw attention to the recent publication of guidelines on the protection of HRDs by the Organisation for Security and Cooperation in Europe (OSCE)'s Office for Democratic Institutions and Human Rights (ODIHR). We believe, furthermore, that the work of several Latin American civil society organisations (CSOs) that have presented cases concerning murdered HRDs before the regional mechanisms has been of great value. These efforts have led to the development of jurisprudence by the Inter-American Court of Human Rights (IACtHR) that favours the development by states of public policies for the protection of HRDs.

Finally, we are pleased to have been able to include in this edition contributions by external collaborators whose association with the subject and authority in the field is widely recognised. This is the case of the Preface, prepared by Michel Forst, the recently appointed UN Special Rapporteur on the Situation of Human Rights Defenders; an analysis of advances in the field of protection in the Americas, by Jesús Orozco H., President of the Inter-American Commission of Human Rights (IACHR) and Rapporteur on Human Rights Defenders; an overview of the topic in Africa by Reine Alapini Gansou, the Commissioner and Special Rapporteur on Human Rights Defenders of the African Commission for Human and Peoples' Rights (ACHPR); and contributions by representatives of local CSOs in Mexico, Colombia and Brazil, countries that have pioneered the effective implementation of public policies for the protection of HRDs. To all of them we wish to express our gratitude.

We trust that this report will be of interest to HRDs, CSOs and governments involved in the protection of HRDs. Similarly, we hope to contribute to, and enrich, the discussions on the adoption of appropriate policies in countries where they do not exist and to help authorities and civil society organisations implement them where they do.

**Luis Enrique Eguren & Mauricio Angel
Policy, Research and Training Unit (PRTU) team
Protection International**

1. FOCUS: Global Observatory on national public policies for the protection of human rights defenders. See <http://focus.protectionline.org/>

Global Trends

2013 and the first half of 2014 have been characterised by the development of at least three broad trends marking the evolution of the field of national public policies for the protection of HRDs: **1) the implementation gap affecting existing policies; 2) the growing interest in adopting legislation on HRD protection** in countries of Central America and Sub-Saharan Africa; and **3) the recent attention given to these policies by international institutions.** These developments notwithstanding, interest in such public policies and mechanisms remains weak – or non-existent – in most Asian countries.

Policy implementation gap

The experiences of Latin American countries where HRD protection policies are in place illustrate the gap between the laws that have been adopted by governments and their effective implementation. For **Mexico, Colombia and Brazil** the contributions of the external authors analyse the particular nature of the local programs in these three countries and deal with the challenges associated with their implementation (*see the section on Latin America, below*).

Thus, despite the high degree of sophistication that characterises the legal frameworks in these cases, and the efforts of civil society and the authorities to ensure their operationalisation, the protection measures available to threatened HRDs remain far from ideal. In large part this is due to insufficient resources and growing need, a lack of training for the individuals responsible for the programmes and mechanisms, poor coordination between some of the state bodies involved, and the adoption of approaches that are limited to the provision of police protection to beneficiaries.

New legislation initiatives

PI has noted a growing tendency to adopt laws for the protection of HRDs in several countries in Central America and Sub-Saharan Africa.

Signs coming out of Central America are hopeful in this connection, despite the high levels of violence that are perpetrated against HRDs.² In **Guatemala**, notwithstanding the weakness of the existing institutional framework for the protection of HRDs, and the absence of dialogue between widespread sectors of civil society and the government,³ the authorities have embarked on discussions about the adoption of a mechanism to provide limited protection to journalists (*see Guatemala, below*). For its part, the recently elected government of **Honduras** took the decision to re-launch draft *Law on Protection Mechanisms for Human Rights Defenders, Legal Operators, Journalists and Social Communicators*, sending it to Congress for approval in mid-2014 (*see Honduras, below*). The bill had been shelved since late 2012 because of distrust of Honduran CSOs towards the government.⁴ It should be noted that both states were required to act on this matter within the framework of the UN Human Rights Council's Universal Periodic Review (UPR).

2. See Unidad de Protección a Defensores y Defensoras de Derechos Humanos - Guatemala (UDEFEHUA). “Análisis de la correlación entre la dinámica de difamación en contra de los defensores y defensoras de derechos humanos y el resto de agresiones sufridas por este grupo en Guatemala”. Boletín El Acompañante. July 2014.

3. See Protection International. “Focus Report 2013. Public Policies for the Protection of Human Rights Defenders: The State of the Art”. May 2013. pp. 8-9.

4. Ibid. p. 9

Despite worrying setbacks in several African countries, consisting of the promotion of negative laws that threaten to close the door on civil society activities,⁵ recent efforts to develop new legal frameworks in the continent should also be noted. The recent adoption of Law 2014-388 of 20 June 2014 by the government of **Côte D’Ivoire** and the bills promoted in **Burundi** by the Independent National Human Rights Coalition (CNIDH in French) and in **Mali** by the Malian Human Rights Defenders’ (COMADDH in French), demonstrate the growing interest of governments, national human rights institutions and CSOs in confronting the challenges of protecting HRDs (*see details for each country in the section on Africa, below*).

PI considers that the measures contained in these legal frameworks are weak and do not incorporate a comprehensive vision of public policy geared to providing effective protection to HRDs at risk. Moreover, these include several worrying elements for the defence of human rights, namely: **a)** they impose duties and obligations on HRDs that go beyond those demanded of other citizens. Failure to comply with these obligations, or subjective interpretation by the authorities could facilitate the criminalisation of HRDs; **b)** they include only a few of the minimum requirements for protection established by the previous Special Rapporteur on the situation of Human Rights Defenders, Margaret Sekaggya⁶ (*see box, below*); and **c)** they do not build on experiences, good

practice and lessons learned in various Latin American countries and by the Inter-American System concerning the implementation of true public policies for the protection of HRDs (*see section on Latin America, below*).

It should also be noted the recent initiative launched and led by the Geneva-based International Service for Human Rights (ISHR), which argues for the development of a “model law” for the protection of HRDs by 2016.⁷

International institutions

Similarly, PI has noticed growing interest on the part of international institutions and bodies in promoting public policies that support national mechanisms and programmes for the protection of HRDs. This is one of the elements that can help create an **enabling environment** for the defence and promotion of human rights. This focus was mentioned in the final report produced by the former UN Special Rapporteur on the situation of Human Rights Defenders, Margaret Sekaggya, published in December 2013,⁸ whose guidelines have been endorsed by her successor Michel Forst.⁹

UN Special Rapporteur on the situation of HRDs’ essential guidelines for the development of protection programmes¹⁰

- HRDs should be consulted throughout the setting up and review of protection programmes.
- The structure of such programmes should be defined by law.

5. For example, the Charities and Societies Proclamation in Ethiopia of 2009; government interest in adopting new provisions regulating the work of NGOs in Kenya; and the Uganda Anti-Homosexuality Act of February 2014, which was declared invalid by the Constitutional Court in August 2014.

6. See A/HRC/25/55. “*Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya*”. 23 December 2013. § 88. p. 14.

7. See ISHR. “*Developing a model national law to protect human rights defenders*”. 20 November 2013.

8. See A/HRC/25/55. op. cit. pp. 14-16.

9. Meeting with civil society organisations. Brussels. 17 June 2014.

10. Based on A/HRC/25/55. op. cit. § 88. p. 14.

- Protection programmes should include an early warning system in order to anticipate and trigger the launch of protective measures.
- It should also assess the safety of the HRDs' family members and relatives.
- Security and law enforcement officials involved in protection programmes should receive specific training on human rights and gender issues.
- The physical protection of HRDs should not be outsourced to third parties unless these have received specific training.¹¹
- Adequate financial resources should be allocated to protection programmes.

Equally, **PI** highlights the work of certain Latin American CSOs such as the Center for Justice and International Law (CEJIL) and the Protection Unit for Human Rights Defenders, Guatemala (UDEFEUGA in Spanish), which have presented cases of murdered Honduran and Guatemalan HRDs, respectively, to the regional human rights system with the support of **PI**. These actions sought to promote Inter-American Court of Human Rights (IACtHR) jurisprudence, which provides governments of the Americas a well-defined framework for the designing and adoption of public policies for the protection by states of HRDs (*see box of minimum requirements established by the IACtHR, below*).

Furthermore, **PI** highlights the launch, in June 2014, of the Guidelines for the Protection of HRDs

published by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR).¹² This document is the result of a consultation process that lasted almost a year, involving a wide range of HRDs and CSOs, experts and representatives of international organisations, national human rights bodies and participating governments (**PI** was involved in this process – see box, below). The guidelines develop a range of general principles aimed at protecting HRDs, dealing with the importance of providing protection against threats, attacks and other abuses committed by state or non-state actors, guaranteeing their physical integrity, and stressing the need to combat impunity.¹³

OSCE/ODIHR guidelines for protection policies, programmes and mechanisms for the protection of HRDs at risk¹⁴

- States should develop such protection bodies in consultation with civil society and with technical advice from relevant international agencies. Protection measures should include physical protection, temporary relocation and other required protection measures and support services.
- Protection programmes, policies and mechanisms should be able to provide gender-sensitive protection and support for women HRDs, and also be able to respond to specific protection requirements of other vulnerable categories of HRDs, as well as the risks incurred by family members of HRDs. Needs identification and the development of protection systems should include HRDs themselves.

11. For more information on the additional problems that might result from the contracting-out of protection programmes, see the section on Colombia, below.

12. OSCE/ODIHR. “*Guidelines on the protection of human rights defenders*”. Warsaw. 2014. (Available in English and Russian only).

13. Ibid. § 7-11. pp. 2-4.

14. Ibid. § 12-22. pp. 4-5.

- States should designate sufficient funds in their regular budget for the physical and psychological protection of HRDs at risk, emergency relief and other support services. They should also actively support non-governmental organisations (NGOs) that provide such services.
- Such measures should be accompanied by training and awareness-raising programmes targeted at relevant professional groups, as well as broader human rights education, in order to shape attitudes and behaviours and raise the profile of HRDs in society, and thereby increase their protection.

The European Union (EU) also gave prominence to the topic of national public policies and mechanisms for the protection of HRDs by including an experts' roundtable at the 15th EU-NGO Forum on Human Rights held in Brussels, in December 2013.¹⁵ The session paid particular attention to HRDs threatened with physical violence, including those defending economic, social and cultural rights in remote areas, and state public policy responses both to counter and prevent such threats. Participants shared their experiences and discussed the challenges and lessons learned in the adoption, implementation and monitoring of such public policy initiatives in their home countries.

Chaired by Enrique Eguren, President of **PI's Board**, the **roundtable on national public policies and protection mechanisms for HRDs** included speakers from Brazil, Colombia and Mexico, representatives of the Office of the UN High Commissioner for Human Rights (OHCHR), the Inter-American Commission for Human Rights, the Office of the Commissioner for Human Rights of the Council of Europe and the European Union, as well as over 15 HRDs from Africa, Asia, Europe and Latin America.

PI participation in an OSCE/ODIHR consultation process

PI was invited, along with 24 other intergovernmental and non-governmental organisations working in the field of HRD protection, to participate in a stakeholders' meeting (June 2013) to discuss and develop recommendations that would help OSCE/ODIHR participating States to fulfil their obligations to protect HRDs. **PI** contributed actively to the discussions by sharing its experience in the field of public policies in other regions of the world.



15. See Protection International. “*PI hosts roundtable on national public policies and Protection mechanisms for HRDs at the 15th EU-NGO Forum on human rights*”. 6 December 2013.

Public policies for the protection of HRDs: PI's vision

At **PI** we firmly believe that the protection of HRDs should be rooted in public policy, which provides the framework for the actions taken by the authorities. Acting as road maps, these policies need to be designed, implemented, regularly evaluated and corrected when necessary.¹⁶ The process is subject to political influence, a factor that should be offset by incorporating technical procedures and expertise drawn not only from government but ensuring the participation of national and (in some cases) international civil society organisations and HRDs (*see Figure 1, below*).

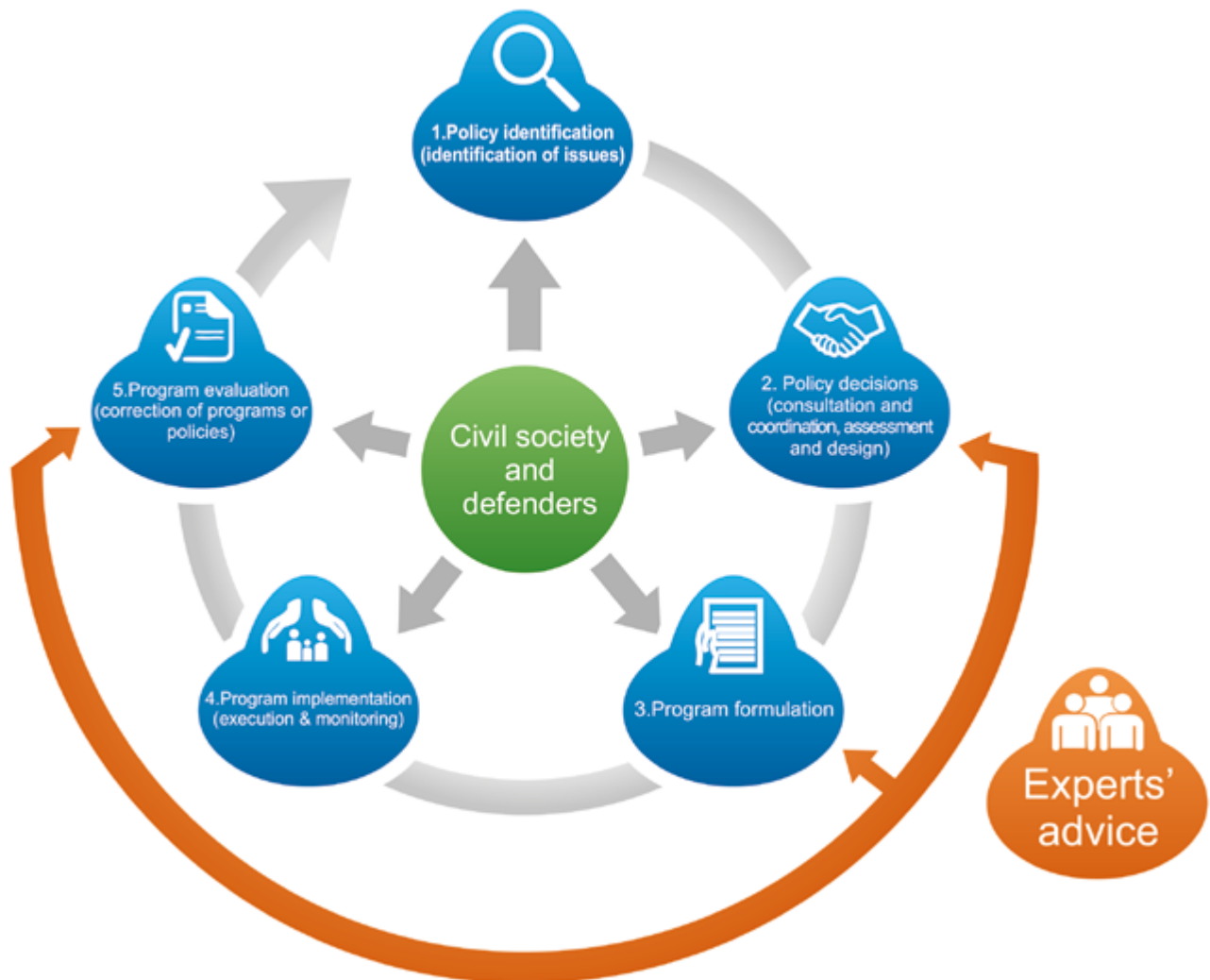
Consequently, the adoption of laws for the protection of HRDs might be one – but not the only – response of state authorities to the threats and risks faced by HRDs in the course of their work. Indeed, responses of this kind may be converted into dead letters if the protection programme, the resources required to implement it and the criteria used to evaluate its effectiveness are not clearly established, and if space is not made available at all stages for the participation of civil society.

Furthermore, public policies that seek to develop a holistic approach to the protection of HRDs should include the following **criteria**:

- I. Immediate and direct protection measures when aggressions occur – including the existence of units capable of assessing risks and determining the physical protection measures that are appropriate in each case, alongside high levels of coordination between state institutions.
- II. Such protection measures should be tailored to the needs of specific groups of HRDs (i.e. women, minorities, community-based HRDs); they should encompass digital security as well as a focus on the psychological well-being of the affected HRD and her/his family and colleagues;
- III. Create a different social and institutional environment that guarantees respect and effective political support of the work of HRDs; and
- IV. Involve preventative action to address the roots causes of aggressions by ensuring thorough judicial investigations to curb impunity.

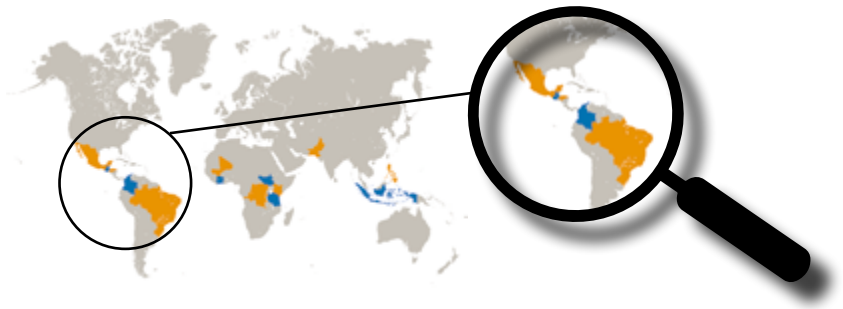
¹⁶ World Bank (October 2010). “La formulación de políticas en la OCDE: ideas para América Latina”. p. 4.

Graph 1 – The public policy cycle¹⁷



17. Source: free adaptation by the authors, based on “La formulación de políticas en la OCDE...”. op. cit. p. 8.

Latin America



The Inter-American System

A “global policy to protect Human Rights Defenders” By *Jesús Orozco H.; President of the IACHR and IACHR Rapporteur on Human Rights Defenders*



CIDH/Daniel Cima

In the Inter-American system for the protection of human rights the obligation of states to protect HRDs has been recognised both by the Inter-American Commission on Human Rights (IACHR) and in the jurisprudence of the Inter-American Court on Human Rights (IACtHR) as an obligation derived from the American Convention on Human Rights.¹⁸ Based on the interpretation of several Convention articles the IACHR has, since the publication of its *Second Report on the Situation of Human Rights Defenders in the Americas* in 2011, stated that there is an obligation on states implement a “global policy to protect Human Rights Defenders”.¹⁹

Specifically, the Commission has indicated that in order to implement this policy states must guarantee four fundamental obligations:

- I. abstain from imposing obstacles that complicate the work of HRDs;
- II. adopt public policies and regulations that allow HRDs to act freely;
- III. investigate violations committed against the rights

of HRDs; and

- IV. protect HRDs from threats and risks against their lives and personal integrity.

These duties are related to the enjoyment of several rights contained in the American Convention, such as the right to life, personal integrity, freedom of expression and association and legal guarantees that, taken together, permit the free and effective exercise of the law and enable the defence and promotion of human rights.

In relation to the specific protection of HRDs at risk of damage being caused to their lives or integrity, the IACHR has identified some of the guidelines that states should observe if they are to offer protection that meets Inter-American standards, particularly concerning the assumptions that determine the ability of HRDs to request for protection, risk evaluation, the suitability and effectiveness of protection measures, the personnel responsible for providing protection and the criteria used to monitor the presence of risk or to determine it is not present.²⁰ Another important advance in our system has been the ruling of the IACtHR in the *Antonio Luna López vs. Honduras* case, which stipulated that as a reparation measure the state should implement, within a reasonable timescale, an integral public policy for the protection of HRDs, including those defending the environment.²¹

The Commission looks with satisfaction on the fact that in our continent certain states have created mechanisms designed to protect HRDs. For example, Colombia has the “Protection Programme for HRDs, Trade Unionists, Journalists and Social Leaders”, Brazil the “National Programme for the Protection of Human Rights Defenders” produced by the Special National Secretariat for Human Rights and Mexico the “Protection Mechanism for Human Rights Defenders and Journalists”.

18. The American Convention on Human Rights was adopted in 1969 and came into force in 1978. Currently, 23 states in the Americas have ratified the treaty. The American Convention is the instrument that assigns powers to the bodies of the Inter-American System, namely the capacity of the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights to receive petitions and cases from member states of the Organisation of American States (OAS) that have ratified the Convention. However, under the terms of the American Declaration on the Rights and Duties of Man adopted in 1948 the IACHR is competent to receive petitions and cases from all OAS member states.

19. IACHR. “*Second Report on the Situation of Human Rights Defenders in the Americas*”. 2011.

20. IACHR, *ibid.* See Chapter V, The Protection of Human Rights Defenders.

21. IACtHR. *Luna López Vs. Honduras. Merits, Reparations and Costs*. Sentence of 10 October 2013. Series C No. 269, § 239-244.

Programmes are also in the process of being created in other states in the Americas. While the IACHR recognises that the existence of these programmes is an advance in the fulfilment of its recommendations, it also emphasises the need to overcome a range of challenges if the Inter-American standards are to be met.

Without denying the advances that have been made the Commission notes that in some states of the Americas a range of obstacles to the defence of human rights continue to exist. Unfortunately, among the most frequent of these are murders and threats, along with violent and repressive action in contexts of social protest. Another of the obstacles that is frequently identified is the criminalisation of HRDs through the initiation and imposition of groundless criminal investigations or legal actions advanced with the sole purpose of intimidating and paralysing their work. These obstacles are accentuated in the case of groups that face particular situations of risk, as occurs with trade union, peasant and community leaders and with indigenous and Afro-descendant communities, HRDs of the right to a healthy environment, of the LGBTI population and of the rights of migrants. These actions create situations of generalised fear amongst some groups, inhibiting and silencing, as a result, the complaints of victims.

Faced with these obstacles, the IACHR, the principal body of the Organisation of American States (OAS), offers, through the Rapporteurship on Human Rights Defenders, a series of protection mechanisms that are subsidiary to and complementary of those that exist in the domestic legislation of member states.²² These are intended to promote and support the voices of our continent's HRDs, enabling them to speak out in safer circumstances.

In the region, the IACHR constantly reiterates that the work of HRDs is fundamental to the implementation of human rights and the full enjoyment of democracy and the rule of law. HRDs are fundamental to the strengthening and consolidation of democracies, as the goal that motivates their activities is important to the whole of society and seeks to benefit it.

I am particularly pleased to be able to share these views on the protection of HRDs within the Inter-American System in the pages of the 2014 edition of **PI's Focus Report**. I welcome the report as an important contribution that will encourage the development of national laws designed to protect HRDs. I am sure that it will encourage critical examination of the matters it deals with at international level and lead to the sharing of good practice and experiences that will help encourage the creation of new mechanisms and strengthen existing HRD protection programmes.

The IACHR Rapporteurship on Human Rights Defenders:

The IACHR is one of the principal, independent, bodies of the OAS. It is responsible for the promotion and protection of human rights in the Americas. Since its creation the IACHR has monitored the situation of HRDs in the region and, in particular, in 2001 created the Human Rights Defenders Unit in order to pay special attention to the matter.²³ In 2011 the Unit established the Rapporteurship on Human Rights Defenders.

22. From its creation the Rapporteurship has had the following responsibilities: a) receive and analyse communications, complaints, urgent actions and press releases sent by human right organisations to the Executive Secretariat; b) advise the Commission on individual petitions and requests for precautionary measures related to human rights defenders; c) monitor hearings on the subject; and d) produce reports on the situation of human rights defenders in the region.

23. Thus, in 2006 the IACHR published its "*Report on the situation of human rights defenders in the Americas*".

PI's expertise and counselling in the Inter-American System

In January 2013, PI provided expert technical advice to the Inter-American Court of Human Rights on the “**Carlos Antonio Luna López vs. Honduras**” case sent to the Court by CEJIL. In its October 2013 ruling, the Court adopted PI's conclusions on the baseline standards necessary to establish a comprehensive public policy for the protection of HRDs in the country.



In January 2014, PI provided new expert technical advice to the Inter-American Court on the “**Human rights defender and others vs. Guatemala**” case sent to the court by UDEFEGUA. The expert opinion addressed the Court's question concerning the adequacy of Guatemala's existing mechanisms to protect HRDs.²⁴ In its 28 August 2014 ruling, the IACtHR requires the Guatemalan state to adopt and implement a public policy for the protection of HRDs along the same baseline standards recommended by PI²⁵.



Minimum requirements established by the Inter-American Court of Human Rights for public policies for the protection of HRDs

(Based on PI expert advice)²⁶

- a. The participation of HRDs, civil society organisations and experts in the elaboration of the norms that might be used to regulate programmes intended to provide them with protection;
- b. Protection programmes should adopt an integral and inter-institutional approach according to the specific risk identified and should adopt immediate protection measures at the point HRDs provide information to the authorities;
- c. A model for the analysis of risk should be created in order to adequately determine the risk and the protection needs of each HRD or group;
- d. A system should be created to manage information concerning the state of prevention and protection measures for HRDs;
- e. Protection plans should respond to the individual risk of each HRD and to the characteristics of their work;
- f. A culture of legitimisation and protection of the work of HRDs should be promoted; and
- g. Sufficient human and financial resources should be made available to respond to the real protection needs of HRDs.

24. Protection International. “PI collaborates with the IACHR in establishing criteria on protection mechanisms for defenders”.

25. IACtHR. *Human rights defender and others Vs. Guatemala*. Preliminary exceptions, Merits, Reparations and Costs, Sentence of 28 August 2014. § 263. En español: Corte IDH. Defensor de Derechos humanos y otros Vs. Guatemala. Excepciones preliminares, Fondo, Reparaciones y Costas. Sentencia de 28 de agosto de 2014. § 263.

26. Ibid.; Luna López vs. Honduras case. op. cit. § 243.

Brazil

National public policies and mechanisms for the protection of Human Rights Defenders: the situation of Brazil. *By Alice de Marchi Pereira de Souza, Marisa Viegas and Rafael Gonçalves Dias (Justiça Global)*²⁷



Introduction

Brazil is today a country that is emerging onto the international stage as a regional and global economic actor. Its democratic system is perceived to be solid and to be confronting historically rooted social problems. Nevertheless, a complex context of human rights problems persists, which is in contrast to this image. The topic of HRDs at risk continues to be little discussed, although many are threatened as a result of their activities in defence of human rights. There is a serious problem of criminalisation, delegitimisation and disqualification of HRDs underway, whose principal protagonists are landowners, large companies and the major media outlets. Justiça Global forms a part of the General Coordination of the National Programme for the Protection of Human Rights Defenders and has been urging the government for a long time to increase its political investment in the matter, as the authorities do not prioritise the protection of HRDs.

The National Programme for the Protection of Human Rights Defenders: some data

The Brazilian National Programme for the Protection of Human Rights Defenders (PPDDH in Portuguese) was formally created in 2004, but only began to function in 2005, and the decree establishing it was only approved in 2007. The relevant draft law is yet to be approved. It is estimated that currently there are about 1,000 threatened HRDs in the country,²⁸ of whom some 400 are included in protection programmes (133 in the PPDDH). State programmes exist in six of the country's 26 states.²⁹ Recently, the programmes in the state of Pará (which has the highest number of cases) and in Rio de Janeiro were suspended, despite the fact that both are characterised by scenarios of serious violations as a result of the impact of megaprojects³⁰ (in the case of Pará) and of mass sporting events³¹ and police violence in Rio.

HRD protection in states that still do not have programmes is dealt with by the PPDDH, which operates from the Human Rights Secretariat of the Office of the President. This is the case of Mato Grosso do Sul, where 60% of the murders of indigenous people occur³² - affecting in particular the Guaraní-Kaiowá who are being forced off their lands by large landholders. Mato Grosso do Sul has the second highest number of HRDs at risk.

27. See <http://global.org.br/>.

28. According to the newspaper "Congresso em Foco", Nº 8. December 2013.

29. Bahia, Minas Gerais, Espírito Santo, Pernambuco, Rio Grande do Sul and Ceará.

30. We emphasise the hydroelectric and mining megaprojects that affect traditional communities.

31. The 2014 World Cup and the 2016 Olympic Games.

32. Data taken from "Relatório *Violência contra os Povos Indígenas no Brasil*", 2012.

HRDs are those engaged in struggles for land and territory. The idea of national development, first advanced during the period of civil-military dictatorship, is still based on the development of megaprojects (infrastructure, the energy sector, extractive industries, etc.). The model is incompatible with the struggles of these HRDs and affects traditional communities (indigenous fisher peoples and “Quilombolas”, or Afro-descendants) and rural workers who need their lands and depend on their natural resources in order to survive. Large businesses and agroindustrial interests pursue their economic projects generating enormous profits and causing immense social impacts, all without engaging in effective prior consultation with the affected communities.

This is reflected in other problems: the resources dedicated to protection programmes are insufficient; effective participation by the security forces is required; state programmes are interrupted because of excessive bureaucracy in the realisation of the programmes; and there is insufficient technical capacity to provide effective protection for HRDs. Another important aspect is the need to go beyond police protection – which is always insufficient and palliative in nature – and to confront the structural causes of threats. This means opening serious investigations into threats when they are made, raising the profile of HRDs and supporting their struggles, which are both legitimate and of great importance.

Finally, we stress that coordination with other civil society actors and the work of the Brazilian Committee of Human Rights Defenders (established in 2004) have been of fundamental importance to the creation of periodic recommendations to the PPHRD. Nevertheless, after ten years of existence we attest, in addition to the difficulties described above, to the ineffectiveness of the programmes.

Colombia

The Colombian protection policy. To be or not to be. *By Diana Sánchez, Director of the Asociación MINGA (members of the Programme Somos Defensores)*³³



During the last five years 260 HRDs have been murdered in Colombia – including 78 in 2013; 759 have been threatened and 97 arbitrarily detained. In total, 1,313 aggressions of different kinds have been registered. In response to this situation, and because of pressure from national and international human rights NGOs, two years ago the government transformed the protection mechanism for people at risk in the country, implementing new measures (Decreets 4100, 4065 and 4912 of 2011 and 1225 of 2012). These norms created an entire institutional framework involving two basic strategies: protecting HRDs who are in danger and preventing attacks against them.

The National Protection Unit (UNP in Spanish) was established in order to fulfil the protection strategy, taking over from the recently disbanded government intelligence unit, the Administrative Security Department (DAS in Spanish). The Human Rights Section of the Ministry of the Interior was given responsibility for developing mechanisms for preventing attacks.³⁴

33. <http://www.somosdefensores.org/>

34. Editors' note: the UNP (Spanish acronym) is responsible for guaranteeing the life and integrity of HRDs, trade unionists, journalists, victims of the armed conflict and public servants at risk.

How the protection mechanism works

Under the protection strategy, a route was established for analysing the situations of risk of which the UNP is informed and pronouncing measures in response. This route begins when the affected person makes a complaint to the authorities and/or requests protection directly from the UNP. Following this, a group known as the Technical Body for Compilation and Analysis (CTRAI in Spanish) carries the task out “in situ”, in order to contribute to the investigation of the case.

Once the information has been compiled, it is passed on to the Preliminary Evaluation Group (GVP in Spanish). This body analyses both the case and the associated risk, after which the case is passed to the Committee for the Evaluation of Risks and Recommendation of Measures (CERREM in Spanish), which makes the final decision about whether protection measures should be granted.

The following entities are invited to participate in the CERREM (with voice but no vote): the Inspector General’s Office, the Ombudsman’s Office, the Public Prosecutor’s Office, as well as the Office of the UN High Commissioner for Human Rights, the UN High Commissioner for Refugees (when the case concerns the internally displaced population) and delegates drawn from civil society. Independently of this long and detailed procedure the Director of the UNP can assign emergency measures in cases where the life and integrity of the person affected is at imminent or extreme risk.

The weaknesses

This new policy appears to be structured, coherent and cohesive. In reality, however, its implementation suffers from serious

limitations and is very different, as has been demonstrated by the Programme Somos Defensores in its special report “Protección Al Tablero”³⁵. Of the findings of this report the following may be highlighted: **a)** the protection mechanism has an exclusively material understanding of protection, leaving out the political protection measures that HRDs require; **b)** the new guidelines are not well known and there is serious confusion among local and regional authorities about how to implement protection; **c)** the bodies responsible for protecting threatened HRDs do not coordinate with each other; and **d)** the institutions responsible for providing protection are overwhelmed and have neither the personnel nor the resources they need to attend to the number of requests for protection that they receive.

A separate aspect involves the constant complaints and difficulties which beneficiaries and applicants complain concerning the actions of the UNP. The research showed that there are protection requests that remain unanswered for 90 days and that the government has loaded the response with bureaucracy, creating five separate bodies applicants have to deal with in order to receive a response to their request.

Of further concern is the privatisation of protection by the government and that is implemented by the UNP. The UNP costs about €80.6 million a year³⁶ and has 739 full time staff. However, 70.2% of its budget is spent by private security companies that offer protection services (security schemes, bodyguards, bullet-proof vests, telephones, weapons). The UNP has contracted 2,430 bodyguards from these companies at a cost of about €1,900 per month each.³⁷ Of the more than 3,000 people contracted by the UNP to provide protection to people at risk in the country, 76.7% are from the private sector.

35. ht Programa Somos Defensores. “Protección al Tablero”. Bogotá. March 2014.

36. COP 200 billion. COP: Colombian pesos.

37. COP 4.8 million.

Land claimants, the displaced population and victims of the armed conflict

Particular attention should be paid to the risk faced by land claimants, the displaced population and victims of the armed conflict and their leaders, as well as to the protection granted them. The appearance of “Armies Against Land Restitution”, the constant death threats against these groups of HRDs and against their families, and the administrative difficulties that complicate full access to government reparation are some of the elements of risk reported by these population groups following the promulgation of Law 1448 of 2011, or Victims’ Law.

On the matter of protection, according to UNP figures, between 2012 and 2013, 2,493 land claimants, internally displaced people and victims of the armed conflict requested protection but only 915 were granted measures (347 land claimants, 472 displaced people and 96 victims, including victims’ leaders). That is to say, only 36.7% of claimants received protection; the rest of the claims were rejected or returned.

The lack of prevention measures against the attacks on HRDs, the constant and growing levels of aggression against all kinds of social leaders and HRDs, in addition to a purely material interpretation of the measures granted, mean that Colombia is still far from providing effective and integral protection to individuals and groups that defend human rights.

Corruption in the National Protection Unit

At the end of August 2014, a corruption scandal shook the UNP. According to the Minister of the Interior, high level officials within the Unit had been involved in the illegal diversion of at least €240,000. Besides the corruption scandal, it should be noted that the outsourcing of the protection and bodyguard duties to private security companies may have negatively affected the security of beneficiary HRDs. According to media sources, the officials currently under investigation had pressured some of the contractor firms to pay bribes in exchange for receiving contracts and expediting payment from the UNP.³⁸ In addition, in testimony to the Colombian Congress less than a month later the Director of the UNP recognised that the Unit had a budget deficit of €28 million (COP 70 billion). The persistence of this situation led to the creation of a committee tasked with reviewing the possibility of withdrawing security measures for some of the 7,000 current beneficiaries.³⁹

The outsourcing of protection to private security companies in Colombia is evidence that, in addition to providing training to the bodyguards who work with the contracting firms, additional measures are also required to prevent and combat corruption. This situation has emerged in a particularly worrying context, as the number of HRDs who have been threatened by illegal paramilitary groups and criminal gangs has increased over recent months.⁴⁰

38. El Espectador. “Red de corrupción en la Unidad de Protección”. 26 August 2014; El Espectador. “MinInterior reveló detalles de ‘olla podrida’ de corrupción en Unidad Nacional de Protección”. 2 September 2014.

39. El Tiempo. “Unidad Nacional de Protección estudia recortar esquemas de seguridad”. 15 September 2014.

40. CA at the end of September about 160 HRDs, journalists, activists and opposition politicians had received death threats. El Espectador. “Piden investigar amenazas contra defensores de derechos humanos”. 24 September 2014; El Espectador. “‘Los Rastrojos’ declaran ‘objetivo militar’ a Claudia López, Iván Cepeda y Piedad Córdoba”. 25 September 2014; El Espectador. “Petro denuncia amenazas en su contra”. 26 September 2014.n.

PI's monitoring of the protection mechanism in Colombia

In late July 2014 PI representatives in Colombia and Somos Defensores co-organised a national conference “Protection, negotiation and transition to post-conflict Colombia” in Bogota. This event brought together civil society organisations and community leaders working on protection. It was intended to incite reflection on emerging protection challenges likely to be faced by HRDs in a transition scenario stemming from the possible signing of a peace agreement between the government and insurgent guerillas. In coordination with Somos Defensores,⁴¹ PI will monitor possible changes in public policies on protection in the post-conflict transition, and their effectiveness in protecting at-risk HRDs.

Guatemala

In her annual report for 2013 the UN High Commissioner for Human Rights criticised certain decisions of the Guatemalan government concerning the protection of HRDs. The report indicates that “the Body for the Analysis of Attacks against Human Rights Defenders⁴² had lost profile. The representatives of the participating institutions were replaced by technical staff, leading to the decision of some CSOs to withdraw from the mechanism”.⁴³

Moreover, Guatemalan CSOs and HRDs continued to denounce the stigmatisation faced by HRDs and raised concerns about a pattern of increasing levels of physical attacks and threats against HRDs in the country over the past five years.⁴⁴ An increase in the number of physical attacks against journalists and in particular the successive murders of four of them mobilised several local associations of journalists to raise the awareness of the government and international community concerning the safety of the profession.⁴⁵ As a result, at the end of November 2013, the government committed to the creation of a protection mechanisms for journalists.⁴⁶ The proposal envisages the creation of a special body responsible for receiving complaints and ensuring that judicial investigations take place, in order to guarantee the security of journalists. Finally, it provides a list of preventive protection measures for journalists;⁴⁷ This mechanism is one of the commitments entered into by the Guatemalan state within the framework of the October 2012 Universal Periodic Review (UPR).⁴⁸

At the time this report was being prepared the implementation process remained slow, following the establishment of the protection system’s High Level Round Table and the Technical Round Table in February 2014 and the appointment of a coordinator in mid-2014. The objective of the round tables is to prepare a project for the Guatemalan journalist protection mechanism.

41. See <http://somosdefensores.org/>.

42. For an explanation of the functions of the Analytical Bodies see Focus Report, 2013. op. cit. p. 9.

43. UN High Commissioner. “Report of the United Nations High Commissioner for Human Rights on the activities of her office in Guatemala” A/HRC/25/19/Add.1. § 49. p. 12.

44. Human Rights Brief. “Situation of human rights defenders in Guatemala”. 1 November 2013.

45. Reporters Without Borders. “Another Journalist Shot Dead in Guatemala, Fourth this Year”. 20 August 2013; Ileana Alamilla. “Informe de la Oacnudh”. Prensa Libre. 2 April 2014; UNESCO. “Las cosas no pueden seguir así. Implementando el Plan de Acción sobre la seguridad de periodistas y la cuestión de la impunidad”. 7 November 2013.

46. Government of Guatemala, Social communication secretariat of the Presidency. “Guatemala se suma a implementación de plan de protección para periodistas”. 28 November 2013.

47. Government of Guatemala, Social communication secretariat of the Presidency. “Propuesta de programa de protección al periodista”, 28 november 2013.

48. Human Rights Council. A/HRC/22/8. “Report of the Working Group on the Universal Periodic Review - Guatemala”

The members of the round tables are drawn from the Social Communications Secretariat of the Presidential Office, the Prosecuting Authorities (*Ministerio Público*), the Human Rights Inspector's Office (*Procuraduría de los Derechos Humanos*) and the Presidential Human Rights Commission of Guatemala (COPREDEH in Spanish). Its role is to prepare a project for the establishment of a mechanism to provide protection to journalists in Guatemala. The round tables receive technical accompaniment from the OHCHR and UNESCO⁴⁹

PI in Guatemala

On 30 September 2014 the OHCHR in Guatemala invited PI to participate in an international seminar on mechanisms for the protection of journalists. The session gathered together over 80 State officials and representatives of local journalists and HRDs. PI actively contributed to the discussions by sharing its experience in the field of public policies for the protection of HRDs and journalists in other countries and issued recommendations on this matter to the Guatemalan authorities and CSO representatives involved in the process.

Honduras

Since 2013, the government of Honduras has taken some steps to address the appalling situation of human rights in the country.⁵⁰

First, it adopted a public policy and national action plan for human rights in early 2013.⁵¹ Second, the Secretariat (Ministry) of Justice and Human Rights (SJDH in Spanish) supported civil society efforts to establish a national network for the protection of HRDs, journalists, social communicators, and justice system operators.⁵² Finally, in mid-2014 the SJDH submitted draft legislation for the protection of journalists, HRDs, and justice system operators (*Ley de mecanismos de protección para defensores de derechos humanos, operadores de justicia, periodistas y comunicadores sociales*) to Congress. The proposal had been shelved in late 2012 due to lack of support.⁵³

The bill, which was approved on first reading by the Honduran National Congress on 4 June 2014 and on second reading on 6 August 2014,⁵⁴ was marked, however, by several limitations and loopholes. In light of this, local civil society representatives, supported by international non-governmental organisations, insisted on a more thorough review of the proposal before the third, and final, reading (*PI was involved in this process: see box below*). Government authorities responded positively, and engaged in a comprehensive consultation process with civil society and other beneficiaries throughout the country. It was thus ensured that the dispositions of the bill met international standards and best practices regarding the protection of HRDs.⁵⁵ At the time of publication of this report, the third reading of the draft bill was still pending.

49. The United Nations offered to support the initiative through UNESCO – given its role as the implementing UN agency of the UN plan of action on the safety of journalists and the issue of impunity. “*UN Plan of Action on the Safety of Journalists and the Issue of Impunity*”. CI-12/CONF.202/6; UNESCO. “*Guatemala launches a proposed mechanism for the protection of journalists*”. 29 November 2013.

50. This was recently highlighted in the IACHR Annual Report of 2013, which expressed concern about the risk faced by HRDs in Honduras due to the persistence of killings, threats, harassment and break-ins in the offices of their organisations. IACHR. “*Annual Report 2013*”. § 235, 239 and 367.

51. Secretariat (Ministry) of Justice and Human Rights. Executive Decree PCM 003-2013. “*Política Pública en Derechos Humanos y Plan Nacional de Acción en Derechos Humanos*”. Tegucigalpa. January 2013.

52. The aim of the network is to promote, protect and defend human rights, monitor the implementation of the National Action Plan for Human Rights approved by the Government and push for the adoption of a law to protect HRDs, journalists and justice system operators. Conexihon. “*Conforman Red Nacional de Protección para las y los defensores de DD.HH., periodistas y operadores de justicia*”. 6 September 2013.

53. See Focus Report 2013. op. cit. p. 9.

54. Conexihon. “*Congreso nacional aprueba en segundo debate ley de protección*”. 7 August 2014.

55. Protection International. “*Protection International and CEJIL join efforts to pass law protecting human rights defenders in Honduras*”. 11 August 2014.

It should be noted that the current interest of Honduran authorities in adopting this legislation stems from consistent pressure exerted by civil society in recent years. Moreover, international recommendations to tackle the high levels of threats and violence against HRDs by regional and international mechanisms also played a role, including those issued by the Human Rights

Council – through the Universal Periodic Review of November 2010,⁵⁶ the country visit report of February 2012 on the situation of HRDs prepared by Margaret Sekaggya, the Special Rapporteur on HRDs,⁵⁷ the October 2013 ruling of the Inter-American Court of Human Rights in the case *Carlos Luna López v. Honduras*⁵⁸ and a public hearing before the IACHR on 28 October 2013.⁵⁹

PI in Honduras

Since 2011, PI has accompanied and monitored civil society-driven initiatives for the establishment of a legal framework for the protection of HRDs, as well as the SJDH's preparatory work on draft legislation for the protection of HRDs, journalists and justice system operators. In October 2013, PI was invited to participate with other local and international civil society organisations in a public hearing on Honduras before the IACHR in Washington D.C. Civil society representatives called on the national authorities to open up dialogue on the bill.

Between late July and early August 2014,

PI joined the Centre for Justice and International Law (Centro por la Justicia y el Derecho Internacional, CEJIL) on a mission to Honduras. Both organisations engaged with senior government officials and members of Congress, as well as local networks of human rights organisations. The aim of the visit was to influence the ongoing debate on the adoption of the draft legislation for the protection of HRDs, journalists and justice system operators. PI and CEJIL voiced their concerns about several shortcomings identified in the version of the draft then under discussion by Honduran lawmakers; both organisations also provided key advice on how to strengthen the bill in light of international standards.

56. At least six of the recommendations dealt with ensuring effective protection of HRDs at risk. See the recommendations to the State of Honduras at the database of UPR-Info, at <http://www.upr-info.org>.

57. The report specifically recommended that the Honduran government should adopt a policy and legal framework to protect HRDs. United Nations Special Rapporteur on the situation of human rights defenders Margaret Sekaggya. "Mission to Honduras". Doc A/HRC/22/47/Add.1.

58. See Section on the Inter-American System above.

59. Participating local and international civil society organisations denounced the Honduran State's failure to comply with the implementation of protection measures for human rights defenders at risk. Protection International. "*Honduras does not protect human rights defenders*". 2 November 2013.

Mexico

The Mechanism for the Protection of Human Rights Defenders and Journalists. *By Pablo Romo Cedano, President of the Advisory Council to the Mechanism for the Protection of Human Rights Defenders and Journalists*

The Mexican Mechanism for the Protection of Human Rights Defenders and Journalists (created by a Law adopted on 25 June 2012 - editor's note), entered into operation in November of the same year, following ten years work and pressure exerted by many CSOs and international bodies. In other words, it is not the result of chance or the goodwill of a government that wants to protect people at risk who work in the fields of human rights or journalism.

Structure

The Mexican mechanism claims to be an international pioneer, both because of its originality and because of its reach. It incorporates lessons learned from the Colombian mechanism, and the law itself and its regulatory regime, meet international protection standards.⁶⁰ The law establishes a range of bodies whose role is to protect people at risk, namely: the Government Board (JG in Spanish), composed of nine permanent members with voting rights, an Advisory Council (CC in Spanish), made up of nine citizen advisors, a National Executive Coordination (CEN in Spanish), and three auxiliary units. Participants in the JG must be of at least Deputy Secretary level and are drawn from the Secretariat (Ministry) of Government (Segob in Spanish), the Federal Attorney General's Office (PGR in Spanish), the

Ministry of Public Security (now absorbed into the Segob), the Foreign Affairs Ministry (SRE in Spanish) and four representatives of the CC. The CC itself is made up of four journalists, four HRDs and a representative of academia. The director of the CEN is named directly by the Segob.

Three units were established under the terms of the law: Reception of Cases and Rapid Reaction; Risk Evaluation and Prevention; and Monitoring and Analysis. The mechanism has an independent budget held under a trust mechanism exclusively for attending to the beneficiaries. The director of the CEN is responsible for the administration of the trust; the law also establishes a Technical Council to oversee the functions of the trust.

Operation

During the first 22 months of operation the Mechanism has failed notably to fulfil the terms of the law or to meet the expectations it generated and that it continues to inspire. On 15 March 2014 it faced a major crisis, when the director of the CEN was forced to resign, leaving a trail of discontent behind him. The majority of the people who had been employed by the mechanism up to this point failed to meet the standards stipulated by the law and there were frequent changes of assigned tasks and high levels of staff turnover. As occurs with all new institutions the Mechanism still suffers from inexperience and multiple failings in basic resource management. Indeed, as of May 2014, the trust (*whose resources are intended to cover the Mechanism's running costs – editors' note*) remained untouched as a result of bureaucratic difficulties.

60. See "Ley para la protección de personas defensoras de derechos humanos y periodistas" and "Reglamento de la Ley para la protección de Personas defensoras de derechos humanos y periodistas". At: http://www.derechoshumanos.gob.mx/es/Derechos_Humanos/Ley_para_la_Proteccion_de_Personas_Defensoras_de_Derechos_Humanos_y_Periodistas.

Even more seriously, of the more than 150 applications received to date by the Mechanism, fewer than 80 have been processed, resulting in risk to the lives of the HRDs and journalists waiting for their requests to be dealt with. Since the Mechanism entered into operation at the end of September 2014, dozens of HRDs have been threatened and many have been forcibly displaced as a result of attacks.

The Mechanism's third unit, responsible for Monitoring and Analysis, has not yet initiated activities. This has impeded the provision of dedicated professional attention to persons who have already entered the Mechanism. In synthesis, the Mechanism has suffered from extremes of inefficiency, serious operational problems, and incompetence in complying with the mission given it by the law and the regulatory framework within which it operates.

Current Perspectives

The context of crisis characterising the Mechanism during the first half of 2014 provided an opportunity for strengthening it on several fronts: an independent consultancy carried out by Freedom House elaborated an action plan – limited in its scope – to specifically improve the functioning of the Risk Analysis Unit and the operational capacity of the overall Mechanism; the renovation of the CEN with a new Director who was committed to developing a short, medium and long term Action Plan that included the professionalisation of all staff; the initiation of the activities of the third unit; the elimination of the backlog; speedier and more timely attention to new cases; and the strengthening of dialogue with national and international civil society bodies

The crisis has meant it has been possible to highlight the inadequacies of the Mechanism and has led to high ranking politicians – in particular Lía Limón, the Deputy Minister for Human Rights within the Ministry of Government, and Deputy Minister of the Foreign Affairs Minister Juan Manuel Gómez Robledo – committing to

furthering its work and strengthening it. The result has been that the backlog of over 80 cases has been eliminated and the JG is now providing some kind of protection.

It is therefore indispensable, on the one hand, to record the experiences that have been accumulated up to now and, on the other, to continue applying national and international pressure to ensure the Mechanism functions adequately and the measures it was created to take are duly applied.

PI in Mexico

Throughout 2013, a **PI** expert, hired as a consultant by the Office of the UN High Commissioner for Human Rights in Mexico, continued to provide hands-on technical advice and to help build the capacities of national authorities and local civil society organisations on risk assessment and security and protection management for HRDs.⁶¹ Moreover, the National Human Rights Commission (CNDH in Spanish), OHCHR and **PI** organised two regional workshops (in Sinaloa and San Luis Potosí) together with each regional Human Rights Commission respectively, to address officials and civil society organisations on HRD protection and security.

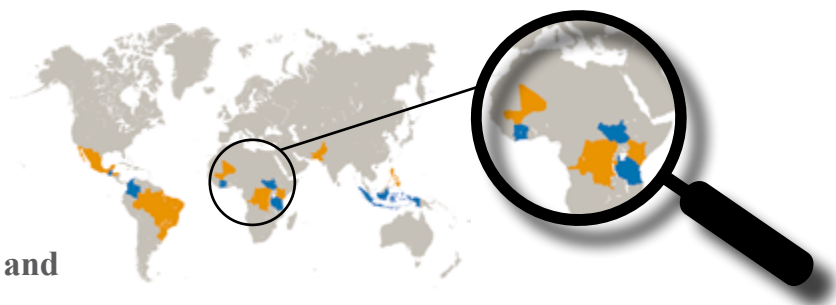
PI was also asked by the OHCHR in Mexico to deliver a distance-learning course to 37 participants, including civil servants and civil society representatives involved with the implementation of the law in the country. Altogether, **PI** has trained more than 150 officials in Mexico through its work with OHCHR-Mexico.

Throughout 2014, **PI** has continued to be called upon to provide ad-hoc independent and technical advice on issues related to risk assessment by, for example, the OHCHR-Mexico, the CNDH, the Crimes against Freedom of Expression Special Prosecutor's Office (Fiscalía Especial de Delitos en contra de la Libertad de Expresión, FEADLE) and Mexican civil society organisations.

61. For **PI**'s intervention in Mexico during 2012, see Focus Report 2013. op. cit. p. 15.

Africa

African Commission for Human and People's Rights (ACHPR)



Public Policies for the Protection of Human Rights Defenders in Africa – *By: Reine Alapini Gansou; Member of the ACHPR and Special Rapporteur on Human Rights Defenders in Africa*



CIDH/Daniel Cima

Promoting and protecting human rights in Africa is a mission that calls for the complete devotion of those individuals who possess a passionate ideal of equality, justice and democracy, and who decide to dedicate their time to something referred to as activism. My experience as Special Rapporteur of the African Commission on Human and Peoples' Rights on Human Rights Defenders in Africa allows me to fully appreciate the courage and the selflessness shown by many HRDs while carrying out their mission. Despite the obligation of states to protect HRDs, in accordance with the implementation of international and regional legal instruments, very often they have failed to do so.

Responsibilities and Failures

All the African States that were present at the United Nations General Assembly supported the 1998 United Nations Declaration on Human Rights Defenders. The 1999 Grand-Bay Declaration, adopted at regional level in Africa, recognises the important role of civil society organisations and calls on African

States to comply with the principles of the aforementioned United Nations Declaration, which stands as a reference today. Similarly, the 2003 Kigali Declaration, also adopted at African level, “calls upon Member States and regional institutions to protect HRDs and encourage the participation of civil society organisations in decision-making processes with the aim of consolidating participatory democracy and sustainable development, and underscores the need for civil society organisations to be independent and transparent”.

However, the challenge remains intact regarding, for example, the insecurity experienced by women HRDs, or the multiple difficulties met by HRDs in general when they tackle burning issues like reprisals and discrimination based on sexual orientation, violence against LGBTI people, or pressures and threats against activists working in the field of environmental protection and extractive industries. The number of violation cases in these areas dealt with by the mechanism of the Special Rapporteur on Human Rights in Africa shows well enough that our states lack any kind of coherent policy that conforms to the international obligations and responsibilities of states to promote and protect the rights of HRDs. In the first place, states should have given effect to international and regional legal instruments relative to the rights of HRDs in their national legislations, which they have failed to do. Among African countries today, the Democratic Republic of Congo started to set the example but unfortunately has made no further progress, whereas Côte d'Ivoire has just adopted a law for the protection of HRDs. Some see this as a good thing. Others think it would be advisable to monitor the application of this law very closely.

What can be observed in most cases, when not maintenance of the status quo, is a tendency for regression, with the emergence of new policies or bills aimed at limiting the freedom and rights of all civil society actors, including HRDs.

In the name of anti-terrorist laws, a growing number of countries muzzle all criticism coming from HRDs. The recent cases involving Ethiopian bloggers and journalists illustrate this new phenomenon. The issue of so-called “satellite” organisations that do not necessarily serve the cause of the people also remains unresolved.

Conclusion

In short, a system of promotion and protection of human rights does exist on a continental level in Africa, which has the potential to respond effectively to the obligation to protect all citizens and particularly HRDs. Coherent public policies for the protection of this target-group, however, remain lacking. It is imperative that states conform to article 2(2) of the UN Declaration on Human Rights Defenders: *“Each State shall adopt such legislative, administrative and other steps as may be necessary to ensure that the rights and freedoms referred to in the present Declaration are effectively guaranteed”*. The actions of states should constitute effective contributions to the efforts made by civil society to try and increase the well-being and the safety of the world’s population.

Resolution 273 of the African Commission, which will surely be echoed at the United Nations level, is yet another useful instrument that will help secure a better working environment for HRDs.

Resolution 273, adopted at the 55th Ordinary Session of the ACHPR (Luanda, Angola, 28 April - 12 May 2014)

This resolution extends the scope of the mandate of the Special Rapporteur on HRDs in Africa to include issues relating to reprisals against HRDs. Henceforth, this mechanism will be responsible for:

1. Gathering information on, and effectively addressing, cases of reprisals against civil society stakeholders;
2. Documenting and maintaining a database on cases of reprisals brought to its attention;
3. Providing guidance to the Commission for the adoption of urgent measures to deal with specific cases of reprisals;
4. Presenting reports on cases of reprisals at each Ordinary Session of the Commission in the Special Rapporteur’s activity report;
5. Ensuring a follow-up of registered cases.

Côte d’Ivoire

The Ivorian government ratified landmark legislation for Africa on 20 June 2014 by adopting Law 2014-388 on the Promotion and Protection of Human Rights Defenders. The legislative process was initiated by the Ministry of Justice, Human Rights and Public Liberties, which, in early 2013, invited non-governmental human rights organisations to comment on early versions of the draft legislation and to make suggestions for its improvement. Some of these suggestions were taken into account although several substantial reservations were not. The draft law was adopted by the Council of Ministers on 4 November 2013 and then submitted to the National Assembly for approval.

While the adoption of this law represents a positive development in the attempts of the Ivorian state authorities to implement the UN Declaration on Human Rights Defenders at the domestic level, several concerns remain regarding the consultation process entered into before the passage of the law as well as its contents.

First, civil society was able to provide input early on, but was not involved in the discussions at later stages of the lawmaking process – i.e. at the Council of Ministers and in the National Assembly.⁶² Second, the law imposes a specific definition of what a HRD is, thus being contrary to international standards set out in the UN Declaration on HRDs and Factsheet 29. Third, while the law establishes the rights of HRDs and the obligation of the state to protect them and facilitate their work, it also imposes obligations on HRDs that could limit their activities, such as forcing human rights organisations to be legally registered (art. 1), and establishing an obligation for HRDs to submit a yearly report of activities to the minister in charge of human rights (art. 13). Moreover, the Minister will enjoy discretionary powers to determine when a defender can be subject to judicial inquiries, detained, arrested or sent to trial to face criminal charges (art. 5) and when a defender’s office or house can be searched (art. 6).

Finally, and although the law stipulates the responsibility of the state to protect HRDs and members of their families at risk (art. 17) and to punish the perpetrators of violations of HRDs’ rights (art. 18), the legal framework fails to

provide clear guidance to state authorities on how they should implement a comprehensive HRD protection policy encompassing prevention, the coordination of different state institutions, the fight against impunity, and respect and promotion of HRD activities.

Up until now, according to local civil society sources, the law is perceived as a half-way measure, as there has been no indication that the Ivorian authorities are adequately setting the stage to fulfill the state’s obligation to protect HRDs at risk. This situation is compounded by the absence of a national campaign to raise awareness among CSOs about the existence of the law, and particularly among vulnerable sectors of HRDs that still face grave risks.⁶³ At the time of writing this report, the government had not yet adopted an executive decree to implement the law, as ordered by article 19.

PI in Côte d’Ivoire

In early February 2013, together with the American Bar Association, **PI** provided technical advice to the coordination team of the Ivorian Coalition of Human Rights Defenders (CIDDH in French) when the government engaged in consultations with civil society for the first bill. Following the adoption of Law 2014-388 **PI** has resumed contact with other local CSOs, which are interested in honing their understanding of experiences and lessons learned on HRD protection in other countries, and advocate for a public policy on the matter to Ivorian authorities.

⁶². Protection International interview with former National Coordinator, Coalition Ivoirienne des Défenseurs des Droits de l’Homme. Brussels. 4 December 2013.

⁶³. Skype interview with representative of Ivorian human rights NGO. 28 August 2014.

Burundi

There is growing interest in passing legislation for the protection of HRDs in the country. The Independent National Human Rights Commission (CNIDH in French) spearheaded efforts to draw up a bill to be submitted to the ministries of justice and human rights for their backing. From 2013 to mid-2014, The CNIDH embarked on a broad consultation process with civil society, with the support of the United Nations Office in Burundi. The text of the bill borrows considerably from the text of the recently adopted law in Côte d'Ivoire. In so doing, the Burundian draft bill unfortunately carries many of the flaws already highlighted in the Ivorian legislation (see Côte d'Ivoire above).

PI in Burundi

PI was invited to participate in a roundtable on the situation of HRDs held in Bujumbura on 20 March 2014.⁶⁴ The event, which was supported by the UN, was part of the CNIDH-led consultation process with civil society. The agenda of the roundtable focused on the discussion of the CNIDH draft bill to protect HRDs. PI contributed by sharing its experiences in similar legislative processes in Latin America, where public policies for the protection of HRDs have been implemented. Following the roundtable, PI has continued to engage with the CNIDH by providing a detailed analysis of the draft bill and hands-on suggestions to strengthen the normative framework.

The bill foresees the formulation and implementation of an HRD protection policy under the responsibility of a Working Group, which will include government authorities and

representatives of HRDs (Title IV, art. 17-20). However, it is unclear how such a working group will be able to ensure both broad representation of civil society and independence from the government while securing the funds necessary for it to function adequately in the long term. Moreover, the bill lacks clear orientation on how the policy is supposed to be devised, particularly regarding reactive and preventive protection measures, coordination among different state institutions responsible for HRD protection, the fight against impunity, and the promotion and respect of HRD activities by authorities.

Despite this, the recent interest of the CNIDH appears to be waning after some of the commissioners involved in drafting the bill were replaced in mid-2014. Furthermore, civil society organisations doubt the government's commitment to promoting an HRD protection bill when it has instead being more interested in reducing the space available for human rights activists.⁶⁵

Democratic Republic of Congo

National legislative proposal for the protection of HRDs

Consideration of the draft legislation has been shelved at the National Assembly since 2011, despite efforts by a follow-up committee (*comité de suivi*) of CSOs based in Kinshasa and with regional representation to arouse interest of legislators in its passing during 2013.⁶⁶ The speaker of the parliamentary majority has argued that the bill has been rejected on grounds of unconstitutionality – HRDs not being a special category of citizens requiring special treatment. The follow-up committee has requested the opinion of counter experts on constitutionality, while seeking to revise and hone the bill so it can be submitted once again.

64. Protection International. “Burundi: PI participates with the National Independent Human Rights Commission (CNIDH) to support the protection of human rights defenders”. 23 April 2014.

65. Protection International interview with Burundian HRDs. Brussels. 24 September 2014.

66. See Focus Report 2013. op. cit. p. 11.

Some sectors of civil society hope that HRD protection will gain new traction in the national political debate once the National Human Rights Commission (CNDH in French), which was setup in early 2013, becomes operational – although this is not part of its remit. However, human rights NGOs remain divided over the appointment of the commission’s civil society representative, thus hampering its normal functioning.⁶⁷

Provincial bills (*édits provinciaux*)

With the lack of progress on the national bill in Kinshasa, a group of local CSOs and members of South Kivu province’s legislative assembly expressed their interest in picking up the regional legislation again following a workshop held in Bukavu in early September 2014. At the hour of this report’s publication in late October 2014, five members of the provincial assembly had already accepted to endorse the bill in coming parliamentary discussions.

Liaison bodies (*entités de liaison*)

In South Kivu, no progress has been recorded on the establishment of the provincial liaison body.⁶⁸ Its launch was tarnished by a row between the provincial governor, whose office concentrates many of the unit’s powers, and civil society representatives. Thanks to mediation efforts by the UN Joint Human Rights Office (Bureau Conjoint des Nations Unies aux Droits de l’Homme, BCNUDH) and **PI** no further incidents have been recorded, but the unit has not yet been convened. In North Kivu, the liaison body became operational in July 2014.

Civil society initiatives

After supporting the setup of a civil society-led protection mechanism for HRDs in Kinshasa – the Human Rights House (*la maison des droits humains*), with over 250 member organisations - the Carter Center (TCC) facilitated the creation of a similar initiative in Goma (North Kivu) in June 2014, and is considering doing the same in Katanga province. The North Kivu mechanism is called “Ukingo Wetu” and is run by local human rights organisations. It aims to mobilise resources to provide holistic support to HRDs at risk, including the provision of protective measures, national and international advocacy activities and capacity building on security management for local organisations.⁶⁹

PI in Democratic Republic of Congo

PI has been involved in the discussions of the draft legislation in South Kivu provincial, providing technical support to civil society and provincial legislators on public policy approaches to HRD protection. **PI** closely monitors the ongoing discussions on the national draft legislation in the follow-up committee in Kinshasa and accompanies civil society in protection cases advanced by the liaison bodies in South and North Kivu.

67. Interview with **PI** representative in Kinshasa. Brussels. 20 August 2014.

68. See Focus Report 2013. op. cit. p. 11.

69. Centre de Recherches su l’Environnement, la Démocratie et les Droits del’Homme (CREDDHO). “**Un mécanisme local de protection dénommé ‘Synergie UKINGO WETU’ est déjà à pied d’oeuvre dans la province du Nord Kivu**”. Unspecified date.

Kenya

The Kenya National Commission on Human Rights (KNCHR) is taking an active role in HRD protection. Until now, the Commission has run a small-scale programme, investigating cases and liaising with sources of threat, duty-bearing authorities and the local HRD protection stakeholders (i.e. the National Coalition of HRDs – NCHRD-K - and international NGOs).

The KNCHR has embarked on a project aiming to propose the adoption of a national public policy on HRD protection for Kenya. Substantial work remains to be done, particularly in analysing lessons learned in other countries, as well as engaging with concerned stakeholders (i.e. CSOs, Parliament, the Ministry of Justice, police and security forces and the international community represented in Kenya).

PI in Kenya

PI Kenya has engaged with the KNCHR on the ongoing reflections that it is hoped will result in proposals for a national public policy for the protection of HRDs. PI has shared its experience and lessons learned from countries where implementation of public policies is already under way. For this purpose, a PI Kenya representative visited Mexico in early 2014. The Kenyan Commission also wants to actively involve local civil society in the process, including the Protection Working Group, of which PI Kenya forms a part.

Furthermore, as part of the Media Working Group, PI Kenya played a substantial role in the discussions that led to the publication of the protocol for the protection of journalists and the safety guide.

Civil society initiative for the protection of journalists in Kenya

On 18 August 2014 the Kenya Media Working Group, which involves journalists and media owners from all over the country, launched a protocol for the protection of journalists and a safety guide in English and Swahili.⁷⁰ Without downplaying the obligation of state authorities to protect the rights and integrity of journalists, the national protocol includes a 10-point Charter for Media Owners and Managers, committing them to a number of guidelines intended to make the working environment of journalists safer than is currently the case. The protocol also establishes the framework for the safety guide: a living manual intended to provide journalists and media houses with useful tips and tools for improving their protection and security in their day-to-day operations.



70. Kenya Media Working Group. "Staying Safe. A Protection Guide for Journalists in Kenya". August 2014. (Available in English and Swahili).

Mali

Interest in adopting legislation to protect HRDs emerged within civil society. The Malian Human Rights Defenders Coalition (COMADDH in French) initiated internal discussions on the need to adopt legislation on HRD protection, as the situation for HRDs had worsened since the beginning of the national crisis in early 2012.⁷¹ In June 2014 COMADDH held a national workshop where the draft legislation was shared with other Malian CSOs, before submitting it to the Ministry of Justice and Human rights for its backing.⁷² As in Burundi, the bill borrows heavily on the text of the current Ivorian law on HRD protection.⁷³ As a result, there has been a failure to adopt a comprehensive public policy approach (see box on *PI's vision on public policies, above*).

PI in Mali

Since late July 2014, PI has established contact with COMADDH. In late September, PI provided COMADDH (and through it the Minister of Justice) with a detailed analysis of the bill with suggestions on ways to enrich its contents and strengthen its public policy approach.

South Sudan

Despite encouraging initial signs regarding an initiative to lobby for a comprehensive bill of rights (see *Focus Report 2013*), the situation has deteriorated due to new government-led initiatives aimed at curtailing the work of voluntary and humanitarian non-governmental organisations, including those CSOs engaged in defending, monitoring and advocating for human rights.⁷⁴ Moreover, the outbreak of armed civil conflict in December 2013 has increased the number of human rights violations and threats to the work of HRDs.⁷⁵

Tanzania

There is currently no specific law addressing the issue of protection for HRDs in Tanzania. The legal and institutional framework does not reflect the recommendations of the UN Declaration on Human Rights Defenders. Neither does it guarantee the rights of HRDs. Currently, the Tanzania Human Rights Defenders Coalition (THRD-Coalition), which includes 30 human rights organisations, is advocating at national level for the adoption of specific legislation to meet the protection needs of HRDs.⁷⁶

In an attempt to overcome this shortcoming the THRD-Coalition has established a civil society-led self-protection mechanism for HRDs in Tanzania. It has put in place a Protection Desk whose officer assess risks and threats facing HRDs nationwide while at the same time giving advice on protection matters.⁷⁷

71. In 2012, Mali underwent a serious sociopolitical, economical and humanitarian crisis, which led to the collapse of state authority. It was triggered by the occupation in Northern Mali by armed groups in January and the subsequent military intervention of French troops one year later. Several human rights violations were reported in the country, including summary executions, enforced disappearances, rapes, looting, arbitrary arrests, detentions, torture and cruel, inhuman or degrading treatment perpetrated both by the armed groups and the Malian armed forces. See “*Report of the independent expert on the situation of human rights in Mali, Suliman Baldo*”. A/HRC/25/72. 10 January 2014.

72. Since its establishment as a local NGO in Mali in 2008, COMADDH has worked on developing responses to protect HRDs at risk. After the civil conflict erupted in 2013, COMADDH put an ad hoc protection mechanism in place to protect HRDs in northern Mali.

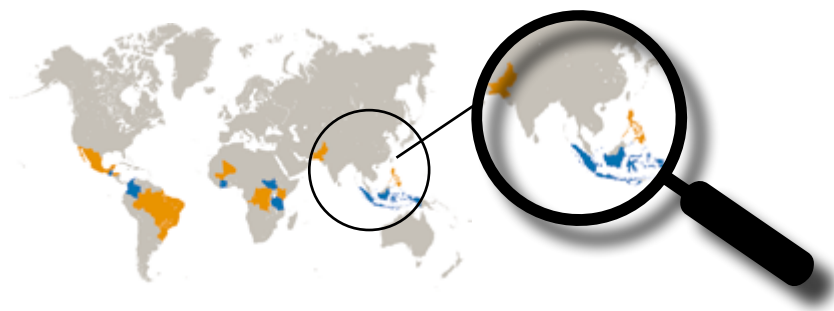
73. The West-Africa HRD Network shared a copy of the bill that was still being discussed in Côte d’Ivoire at the time. Protection International Skype interview with COMADDH President. 28 August 2014.

74. EHAHRDP. “*Change will not come until we talk about reality: The closing Space for Human Rights Defenders in South Sudan*”. Kampala. December 2013. pp. 15-16.

75. EHAHRDP. “*NGO written statement to the 25th session of the UN Human Rights Council*”. 18 February 2014.

76. THRD-Coalition. “*Protection and Security Needs for Human Rights Defenders in Tanzania. Needs – Assessment Report*”. 2013.

77. THRD-Coalition. “*Report on the Situation of Human Rights Defenders in Tanzania 2013*”. 2014. pp. 7-8.



Indonesia

There has been no further progress with the draft legislation on HRDs submitted to parliament by the human rights NGO Impar-sial, and it appears that stakeholders are no longer pushing for legislation. In addition, the National Human Rights Commission (Komnas HAM) appears to have lost interest in the creation of a special unit for HRD protection. Nevertheless, Komnas HAM Commissioner Siti Noor Laila was appointed as Special Rapporteur for HRDs in June 2014. She has pledged a thorough review of the commission's files on HRD issues and to improve coordination with government bodies, such as LPSK (charged with the protection of victims and witnesses), in order to strengthen the protection of HRDs. With six understaffed regional offices, however, Komnas HAM's capacity to cover the entire Archipelago is low, particularly for cases involving HRDs operating in remote areas.

Pakistan

Until the merger of the Ministry of Human Rights with the Ministry of Law and Justice, there were at least two civil society-driven initiatives to set up HRD protection mechanisms in the country. The first, with national scope, was developed by local CSOs with the support of international counterparts; the mechanism was also linked to the development of a national human rights policy framework.⁷⁸ The draft of the HRD protection mechanism and policy framework was agreed in a national consultation and later shared with the then Ministry of Human Rights.⁷⁹ However, following the merger of the ministries, as of late 2013 the civil society network responsible for following up the project had received no response from the Ministry of Law and Justice.⁸⁰

The second HRD protection mechanism was intended for Islamabad Province. The then Ministry of Human Rights committed itself to taking the draft forward by organising provincial- and district-level consultations in order to reach consensus. However, as of late 2013, there was no one within the Ministry of Law and Justice responsible for the process.⁸¹

78. Strengthening Participatory Organisation (SPO). *“Two-Day Consultation on National Human Rights Policy Framework and National Human Rights Defenders’ Mechanism in Pakistan”*. Unspecified date.

79. The draft of the mechanism was developed under the “Promoting Human Rights and Fundamental Freedoms in Pakistan” project funded by EU. For more information on this project, see http://eeas.europa.eu/delegations/pakistan/projects/list_of_projects/216586_en.htm.

80. Protection International e-mail interview. Pakistani human rights defender. 16 august 2013.

81. Ibid.

The Philippines

At the end of 2012, several organisations urged the Philippines government to pass the Human Rights Defenders Act House Bill 5379⁸² introduced in October 2011 before the House of Representatives in Congress.⁸³ However, these calls remain unanswered. The bill, which was drafted by local CSOs Karapatan (Human Rights Organisation Alliance) and Tanngol Bayl (Defend Women), was re-introduced (as House Bill 1472) in July 2013.⁸⁴ However, no congressional hearing has yet been set on the bill.

According to representatives of Karapatan contacted by PI, there is currently little hope that the bill will pass, as both the Filipino Congress and the Executive are mired in a scandal over misuse of public funds for development projects, while other laws concerning human rights have not been seriously implemented, despite increasing threats, criminalisation and even killings of HRDs, particularly those defending the rights of indigenous peoples.⁸⁵ This is compounded by the seeming lack of action by the Filipino Commission on Human Rights regarding cases of human rights abuses.⁸⁶

82. Republic of the Philippines. House of Representatives. House Bill 5379. At http://congress.gov.ph/download/basic_15/HB05379.pdf

83. Bulatlat.com. “*Passing of Law Protection Human Rights Defenders Urged*”. 13 December 2012.

84. Republic of the Philippines. House of Representatives. House Bill 1472. At http://congress.gov.ph/download/basic_16/HB01472.pdf

85. Protection International e-mail communication with Karapatan Alliance representatives. 13 and 14 August 2014.

86. Ibid.

Conclusions

This 2014 edition of **Focus Report** has demonstrated that there is growing interest in several countries around the world, and by some international governmental organisations, to promote the adoption of national programmes for the protection of at-risk HRDs. By adopting a broader public policy approach states contribute to strengthening an enabling environment for the defence of human rights. Such an approach should include: the participation of civil society in the elaboration and monitoring of the programmes; close coordination between the state bodies involved in providing protection; the definition of a protection programme that is open to all kinds of HRDs; programmes should include a transparent model of analysis and evaluation and provide measures that are adapted to specific groups; programmes should make financial and human resources available; and programmes should advance actions intended to end impunity and promote the right of HRDs to defend human rights.

In the countries where such public policies already exist – Brazil, Colombia and Mexico – the greatest challenge is to ensure their effective implementation. Therefore, beyond the promising normative frameworks that are being developed in Latin America (Guatemala and Honduras), Africa (Côte D’Ivoire, Burundi, Mali and Kenya), state bodies, organised civil society and international stakeholders should make efforts to ensure that the response goes beyond paper commitments and promises and is converted into concrete action in favour of HRDs.

Rather than merely seeking to create uniform legislative models through which countries may fulfil the duties enshrined in the UN Declaration on Human Rights Defenders, what is of fundamental importance is that any specific normative developments or public policy for protection, respond to the real needs of local civil society and HRDs. Their objectives and methods should be defined in conjunction with civil society organisations, as should the measures designed to monitor, evaluate and improve programmes once they are in place.

Forthcoming Protection

International study on the topic

PI and CEJIL. *Public Policies for the Protection of Human Rights Defenders in Latin America: Advances and Challenges* (working title). (This publication will be available in Spanish and English only).

Based on extensive research and interviews with HRDs and government authorities from several Latin American countries, this publication aims both to shed some light on the challenges faced when implementing public policies, on mechanisms for the protection of HRDs and to make recommendations to policymakers and CSOs on ways to improve the effectiveness of their actions.